Public Report No. 14

An Investigation into Complaints of Improper Interference in the Operation of the British Columbia Board of Parole, Particularly with Respect to Decisions Relating to Juliet Belmas

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Fairness for all in British Columbia

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AN INVESTIGATION INTO COMPLAINTS OF IMPROPER INTERFERENCE IN THE OPERATION OF THE BRITISH COLUMBIA BOARD OF PAROLE, PARTICULARLY WITH RESPECT TO DECISIONS RELATING TO JULIET BELMAS

OCTOBER, 1988

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A. BACKGROUND - THE B.C. BOARD OF PAROLE

Parole originally referred to the promise made by an inmate that he would not attempt to escape if he were to be conditionally released from prison. The term has now come to refer generally to the process of gaining lawful release from incarceration while continuing to serve the remainder of a court-imposed sentence in the community. Such release is normally accompanied by specific conditions. The obligations which bind the sentenced person while on parole may include regular reporting to a Corrections official, restrictions on personal associations, geographic or mobility limitations, and prohibitions on specific kinds of behaviour. Violations of the imposed conditions may result in the parolee's return to an institution to serve the remainder of the sentence.

With certain exceptions, most inmates are eligible to apply for full parole upon completion of one-third of their sentence. Day parole often precedes full parole. It is a modified form of this conditional release which permits inmates to attend school or to work in the community during the day; however, they must return to an institutional setting at the conclusion of their day's activity. Most inmates are eligible for day parole consideration after the completion of one-sixth of their sentence.

The granting of parole has been the source of much controversy throughout Canada in recent years; and attempts at reforming the process are ongoing. A common perception that the parole process is too lenient toward offenders has raised public concern and the call for parole officials to be more cautious in ensuring that the intent of the offender's sentence has been met.

The legal basis for parole is found in the federal Parole Act. The Act permits the provinces to establish their own parole boards to deal with inmates serving their sentences in provincial institutions. These are mostly individuals whose sentences are less than two years in length, but also include a small number of persons whose sentences exceed two years but who have transferred into the provincial corrections system under the terms of an agreement between the province and the federal government. The mandate of the B.C. Board of Parole, which commenced operations in 1949, was broadened in late 1979 to encompass these types of inmates.

The Board consists of a full-time chairman plus other professional and support staff. As well, twenty-three part-time members are selected to be broadly representative of the B.C. community. These members are appointed by

Order-in-Council initially for a one year period; then, usually, their appointments are extended for a three (formerly two) year period. Currently there is no time limit on the chairman's tenure.

A model for the nomination and appointment of members is contained in the Parole Board Manual of Operations. It is reproduced here as background to certain observations which appear later in this report.

CRITERIA FOR MEMBERSHIP

Based on the commitment to citizen participation in parole decision-making, the criteria for selecting candidates for membership are as follows:

The Nature of Community Involvement

There will be a strong emphasis on selecting candidates who have demonstrated through their activities and participation, a true sense of responsibility and interest in community affairs and concerns.

Personal Qualifications

Candidates will require a level of abilities, experience and objectivity consistent with the independent decision-making role of the Board of Parole within the framework of the justice system. They will also have an understanding and appreciation of the serious impact of their decisions both on the individuals concerned and on the community at large.

Level of Understanding of the Justice Process

A general knowledge of the justice process and its component parts may be a significant criteria (sic) for Board membership. However, as opportunities

will be provided for the orientation and ongoing development of all Board members, this knowledge requirement may be supplanted by an active interest in learning about the justice process and system.

Community Representation

To be consistent with the principles underlying the development of community membership, candidates should be seen by the community to represent broad areas of endeavour and achievement in the community, both with respect to their community activity and participation, and in terms of role, career or profession. The overriding consideration in this sense would be one of broad credibility within the community as opposed to the more limited representation of specific interest groups within the community.

Recruitment

The purpose of recruiting candidates is intended to reinforce the philosophy of citizen involvement.

Recommendations for candidacy are sought through a community based process from:

- justice and related personnel in the community,
- community based service agencies and organizations, and
- the general public.

The search for candidates is conducted by means of meetings, both private and public, and through the use of the public media.

Nominations

Candidates who meet the criteria for membership are personally interviewed, reference and security checks are undertaken as required, and a short list of nominations is submitted to the Attorney General.

Appointment

The Attorney General recommends appointments for the Board membership to Cabinet. Based on the decision of Cabinet, the Lieutenant Governor of British Columbia appoints members to the Board by Order-in-Council.

B. THE COMPLAINTS

Following a highly publicized series of events which related to activities of the B.C. Board of Parole, on August 11, 1988, the lawyer for inmate Juliet Belmas requested that the Ombudsman investigate allegations raised by a former parole board member "... suggesting interference by Premier Vander Zalm in the decisions of the B.C. Board of Parole in relation to Juliet Belmas"

Additionally, a former professor of Ms. Belmas at the University of Victoria requested that the Ombudsman consider certain public statements made by Mr. Brian Smith, the former Attorney General, about Parole Board hearings involving Ms. Belmas to determine whether these statements tended "... to incite public hatred of Ms. Belmas and deny her a fair parole hearing".

Because the decisions and procedures of the Parole Board are "matters of administration" under section 10 of the Ombudsman Act, it was the responsibility of this office to investigate these concerns.

On May 8, 1984 Juliet Belmas was sentenced to 20 years imprisonment for her part in the criminal activities of a

group which became known as the "Squamish Five". Upon appeal the sentence was reduced to 15 years. She was transferred from the Prison for Women in Kingston, Ontario back to British Columbia on September 11, 1985 in order to be present at the appeal hearing. In December of the following year, she transferred to provincial jurisdiction under terms of the federal-provincial agreement.

On May 5, 1987 Juliet Belmas was granted day parole by the British Columbia Board of Parole. Brian Smith, the Attorney General at that time, was publicly critical of the Parole Board's decision and continued to voice his concern publicly over the following months. (Vancouver Sun, Vancouver Province, May 14, 1987; May 20, 1987; Victoria Times-Colonist, November 27, 1987) On August 10, Ms. Belmas' day-parole was suspended following an allegation of shoplifting. In November, she was convicted and received a sentence of one day concurrent for this offence. On December 8 and 9, 1987 the B.C. Board of Parole conducted a post-suspension hearing that resulted in the termination of her day parole. In a subsequent hearing on March 22, 1988 day parole was again denied and Juliet Belmas remained incarcerated at Twin Maples Correctional Centre.

News Reports

Public debate on these issues resumed on August 3, 1988 after a Vancouver Sun news story claimed that the former Parole Board chairman, John Konrad, and two former members, Robert Thompson and Alex Hankin, had lost their positions on the Board as a result of an unpopular decision made to grant day parole to Juliet Belmas in May, 1987. In the news story the Premier denied any improper interference. The press then reported Mr. Hankin as claiming that the Premier had made a late night call to him on May 12, 1987, the date the story of her release had broken; and that during this call the Belmas case was discussed (Vancouver Sun, August 4, 1988). The Premier is reported as having denied speaking to Mr. Hankin about that matter and claimed the telephone conversation took place between him and Mr. Hankin "maybe two or three weeks" after the Belmas decision. He is quoted as stating that the Belmas affair was raised by Mr. Hankin and was only mentioned in connection with his failure to secure a government appointment. A few days later, the Premier was reported as agreeing that he had placed the call on the date claimed by Mr. Hankin and that during the conversation he had mentioned to Mr. Hankin that the Attorney General and others were "not very happy about the decision" (Vancouver Sun, August 8 and 9, 1988).

In the meantime, the controversy had re-focused on the issue of the Parole Board appointments. Earlier in the week,

according to the news reports (Vancouver Sun, August 6, 1988), the Premier had stated that he could not say why Mr. Hankin had not been reappointed to the Parole Board and said that reporters should ask the former Attorney General, Brian Smith. Upon his return from vacation, Mr. Smith is quoted as stating that he had recommmended the reappointment of the Board members involved in the Juliet Belmas day parole decision, despite his strong personal opposition to the Board's ruling in the case. It was reported as Mr. Smith's recollection that the Premier vetoed the appointments. The Premier then is said to have pointed out that the appointments were a Cabinet decision. (Vancouver Sun, August 8, 1988).

In this way the substantive and procedural issues of Juliet Belmas' parole status became a matter of public discussion and concern, leading to the Ombudsman's investigation and this public report. The above news reports are quoted to show the information that was before the public at the time and not necessarily to suggest the truth.

C. THE APPOINTMENT MODEL

> The decision to grant or deny parole to an inmate is one that significantly affects the community. The community should therefore, through representation, be involved in this decision. The Board reflects this philosophy in that all its members with exception of the Chairman, are lay citizens of the community who, in the discharge of their decision-making responsibility, reflect the interests and well-being of the community as well as the needs of the inmate. (B.C. Board of Parole - Manual of Operations).

Some members of the professional parole community have suggested to this office that interference with the proper operation of the Board begins with the appointment process. The original Parole Board membership model envisaged a system of community-based nominations to this important tribunal. Representations as to who should sit on the Board were to be sought from community-based justice organizations (police, judges and correctional officials), as well as community service organizations and the general public. Candidates were to be assessed by the Parole Board Chairman who would then send a list of nominations to the Attorney General for appointments to take place on an overlapping pattern each April 1st. The rationale for this approach was that justice was too precious a commodity to be left strictly in the hands of the justice professionals. Because the community is vitally affected by justice related decisions, the community should be involved in the making of those decisions.

This system was apparently in good working order during the years of Parole Board operation immediately following the 1979 re-organization. Then, about 1983, members of the parole community detected a shift as, increasingly, candidates came to be identified through the political process rather than the community selection process. Nominations continued to come out of the criminal justice system, from some community organizations, from past and present Board members and from direct applications; but community recruiting was no longer an active undertaking.

As matters developed, the shift in emphasis did not bring about a negative effect on the Parole Board's operation. Good decision-makers surface through political channels as well as from the community at large; and because the British Columbia Parole Board has established a thorough training program, appointees, regardless of the reasons for their appointment, with few exceptions have proved to be capable and fair in dealing with parole issues.

The potential difficulty in utilizing this scheme is that with increasing politicization of the appointment process, the pool from which members are drawn is diminished and chances are lessened that Board membership will reflect the breadth of concerns that exist within the community.

As well, the less politically related such appointments are, the more confidence the public can have that members of the Board will be isolated from political influence. The closer the parole system comes to a truly community based model, the less likelihood there is of politicians contacting Board members they may know and who they think may be indebted to them.

Therefore, while there is no administrative error identified in this instance, it is recommended that the community design presently contained in the B.C. Board of Parole Operations Manual be restored in practise and entrenched in provincial legislation. For the Board to function most effectively, appointments should be made, and be seen to be made, on the basis of ability and community involvement and acceptance.

D. THE PREMIER'S CALL

Some of the central questions in the public discussion of the Belmas parole case relate to the Premier's intention in phoning Mr. Hankin on May 12, 1987, the effect of that call on Mr. Hankin in his capacity as a member of the B.C. Parole Board and the impact it has had on Ms. Belmas' parole status. To answer these questions, the Ombudsman's office has conducted detailed interviews with the Premier, Mr. Hankin, former Parole Board member Robert Thompson, and former Parole Board Chairman, John Konrad.

Intention

Although there are differences in emphasis and timing between the Premier's and Mr. Hankin's versions of the events surrounding the May 12, 1987 telephone call, there are major common elements in each version. It should be noted that Mr. Hankin was the Premier's constituency president. MLA's play an advisory role in the numerous appointments of constituency members to various provincial boards and agencies. Mr. Hankin was not fully employed and was seeking further remunerative government appointments, with the Premier's assistance. To this end following earlier discussions with the Premier and his Principal Secretary, Mr. Hankin had been calling the Premier and his assistants on a frequent basis

for several months preceding the May 12th call. The Premier's office had not been responding to these calls.

The B.C. Parole Board decision on May 5, 1987 to grant day parole to Ms. Belmas became public knowledge on May 12, 1987 and was commented on critically to the news media by former Attorney General Brian Smith as he left the Parliament Buildings that day. The Premier phoned Mr. Hankin at approximately 10:00 p.m. that evening.

Both Mr. Hankin and the Premier agree that the Premier called Mr. Hankin; that the Premier owed Mr. Hankin a response to his frequent telephone calls; that the Belmas decision and its likely negative impact on Mr. Hankin's popularity among influencial government members was discussed; and that the Premier said that further efforts would be made to obtain an appropriate appointment for Mr. Hankin. The Premier asserts that the major topic of discussion was the government appointment process, with Mr. Hankin expressing his concern that he would be discriminated against because of his involvement in the Belmas decision; and the Premier assuring him that appointments were made by the Appointments Committee to qualified people, usually for three years only. Mr. Hankin says that the major topic was his role in the Belmas

decision with the Premier stating the difficulty he was having in getting him an appointment because it seemed that Mr. Hankin didn't have any friends in Victoria; and with Mr. Hankin explaining in detail the reasoning behind the Belmas decision.

Immediately following this telephone conversation, Mr. Hankin phoned Parole Board Chairman John Konrad. Mr. Konrad's contemporaneous notes of this conversation confirm the general themes: that the Premier called Hankin; that they discussed Mr. Hankin's role in the Belmas decision and the reasoning behind the decision; and that there were angry government members in Victoria.

Mr. Konrad decided with Mr. Hankin that no action was required; the Belmas decision had been made and it would not be changed by whatever the Premier or other members of the government thought about it. However, apart from Mr. Hankin's co-panelist Robert Thompson, they did not consider it to be appropriate to inform other members of the Board of the incident as they wanted to ensure against any general feeling of political pressure on future decisions.

As to the Premier's intention in placing the call, whether his major concern was to express displeasure at the Belmas

decision as recalled by Mr. Hankin, or to discuss government appointments as recalled by the Premier, it is clear from all accounts that the Premier was not attempting to influence Belmas' parole status. He would not have known that her status would be reviewed at a subsequent hearing, or that Mr. Hankin would have any future role to play in her case. As such, it is concluded that the Premier's telephone call to Mr. Hankin on May 12, 1987 was not made with the improper intention to influence the Parole Board's handling of Juliet Belmas' parole status.

Effect

Regardless of the Premier's intention in placing the May 12th call, it did have an unfortunate effect on Mr. Hankin in his capacity as a Parole Board member. Seven months later, on December 8, 1987, he was called on to sit on a further panel to consider Ms. Belmas' status following her arrest and conviction for shoplifting. His further involvement was consistent with the B.C. Parole Board practice to have members knowledgeable with a particular case sit on subsequent hearings concerning that individual.

Again, as he had at the May 5, 1987 hearing, Mr. Hankin considered the documentation on file, listened to the sworn testimony of Ms. Belmas and the other witnesses, and

deliberated with his co-panelist. However, prior to coming to a decision on whether to revoke Ms. Belmas' day parole status, he had misgivings about his involvement. He says that he thought of the Premier's call and became uncertain as to whether he was leaning toward a particular decision because he believed it or whether it was because he was trying to please other people. Given this uncertainty, he decided to disqualify himself from making a further decision. Clearly, the May 12, 1987 telephone call from the Premier to Mr. Hankin subsequently had an improper, if unintended, effect on his role as a member of the B.C. Parole Board. However, by removing himself from the panel, Mr. Hankin prevented this improper effect from causing unfairness to Ms. Belmas.

Comment and Recommendations

The present appointment and case assignment practices of the B.C. Parole Board have the potential to create apparent and real bias in the process, in at least the three areas identified below. Parole Board proceedings have a direct impact on the liberty of individuals serving prison sentences. As such, they must be manifestly fair and scrupulously consistent with the principles of fundamental justice. Whereas a sentencing judge theoretically sets the term of imprisonment, in reality the Parole Board has primary and continuing jurisdiction over at least 2/3 of that term.

Judges are insulated from actual or potential improper interference in their sentencing decisions by several features of their position: they are appointed permanently so that they need not be concerned with reappointment; once they have made a decision they are not involved in subsequent reconsiderations of it; and they hold no other employment or official position.

A perfect analogy with the judicial role in sentencing cannot be made because of the special characteristics of a parole board's mandate. However, the comparison is instructive in addressing some of the problems that have arisen in the Belmas case. It leads to the following observations and recommendations.

1. Reappointment. Parole Board members would be more independent and less open to real and apparent improper influence in their decision-making if they were unconcerned with their own reappointment. While permanent appointments would be inappropriate, it would be helpful if Board members were appointed for a single term of perhaps 3 or 4 years. Reappointment should not be an option and therefore could not have or be seen to have an effect on their decisions.

2. Subsequent Hearings. There is some administrative and substantive efficiency in assigning Board members to sit on subsequent panels involving individuals with whom they are familiar. However, this continuing responsibility for an individual can expose panel members to outside influences where they have made unpopular decisions. Parole decisions are difficult and vitally important. It is neither fair to subject the people who make them to external pressure nor appropriate to tempt them to discuss or justify their detailed and often complex reasoning outside of the formal process. As a practical matter, before any subsequent hearing the panelists would need to review all relevant documentation and information anew in any event, so that previous direct involvement should be unnecessary as well as potentially unfair. Therefore, it is recommended that Parole Board members not sit on hearings concerning individuals on whose status they have previously ruled.

3. Other Employment. B.C. Parole Board members, other than the Chairman, sit part-time and are paid at a daily rate. They are concerned and respected members of their communities who are not expected to derive their livelihood from this role. Therefore, many have

other employment and all have other sources of income or support. It is also not unknown for individual Board members to seek or hold other appointments, voluntary and remunerative, from the provincial government. As is demonstrated in this case, this can lead to awkwardness, misunderstanding and real or apparent bias. It is therefore recommended that during the term of appointment to the B.C. Parole Board, members neither seek nor hold any other appointment, office, employment or contract with or through the provincial government.

E. THE ATTORNEY GENERAL'S ROLE

Public Comments

One complainant to the Ombudsman's Office asserted that the Attorney General abused the power of his public office by inciting public hatred against Ms. Belmas, and that by his public criticism of the parole decision interfered improperly with the independence of the Parole Board. The complainant maintained that parole hearings should be free from the influence of external political pressures, and that the Attorney General's comments had resulted in a denial to Ms. Belmas of a fair and impartial parole hearing when she next appeared before the Board.

It is not possible to ascertain whether anything the Attorney General said incited "public hatred" against Juliet Belmas or to measure the general impact of the Attorney General's comments on the public. One would also have to consider what limitations one was able to place on the pronouncements of an elected official without restricting his freedom of speech.

The Attorney General was legislatively responsible for all matters relating to correctional centres and the treatment

of persons who offend the law. Would such a responsibility allow him publicly to criticize a decision of the Parole Board? Lord Denning in addressing a similar issue in a famous contempt trial said when speaking of the Courts:

> "We do not fear criticism, nor do we resent it. There is something far more important at stake. It is no less than freedom of speech itself. It is the right of every man, in Parliament or out of it, in the press or broadcasts, to make fair comment, even outspoken comments on matters of public interest. Those who comment can deal faithfully with all that is done in a Court of justice. They can say that we are mistaken and our decision erroneous..."([1968] 2 All E.R. 319)

Justice must be administered in public and be subject to public criticism. Lord Denning's remarks should apply equally to quasi-judicial tribunals such as the B.C. Parole Board.

There are limits, however, on freedom of speech. If the intent of the public comment was to impair the administration of justice by, for example, imputing improper motives to those taking part in a proceeding, the speaker would be in contempt. The public stature of the speaker is a relevant factor in that the dignity and independence of the judicial system are more influenced by the comments of someone the public perceives as having special knowledge. The Attorney General has special responsibilities in this regard. However, in all of the

circumstances of this case it is not apparent that the comments of the Attorney General impaired the public confidence in the administration of justice.

Certainly the Attorney General's comments had an adverse impact on Juliet Belmas herself, causing her increased strain and feelings of insecurity, as she perceived the possibility of her parole being revoked. In similar manner, the Attorney General's comments may well have caused some anxious moments for those who supported her. Others, sensitive to the attacks the parole system was experiencing from many quarters, may have quietly thought to themselves that such comments were better left unspoken. There may well have been some reaction to these observations on the part of Parole Board members. Although it is never pleasant to hear one's work publicly criticized, the issue that must be considered here is whether these comments had any effect on the making of Parole Board decisions. This investigation has not been able to identify any such effect.

The members of the Parole Board with whom this issue was discussed did not see any likelihood that they would have permitted such statements to cloud their judgment, and there is a compelling reason for believing that to be the case. Of paramount consideration in all Parole Board decisions are the three criteria for parole which must be satisfied, as follows:

1. The inmate must have derived the maximum benefit from imprisonment

2. The reform and rehabilition of the inmate will be aided by the granting of parole

3. The release of the inmate on parole would not constitute an undue risk to society

As a consequence of their orientation these three principles become firmly entrenched in the thinking process of Parole Board members as they pursue their task.

While this investigation can not determine the exact impact of the Attorney General's remarks on the general public, it is apparent that given the objective criteria by which all Board decisions must be measured and the thorough grounding Board members receive in adhering to those three principles, critical public pronouncements made by anyone, including the Attorney General, should not have a material effect on a Board member's thinking.

Proposal for a New Panel

A further form of interference was perceived by parole officials in the May 27th, 1987 proposal from the Attorney General's office that the Parole Board create a new panel of three members to re-determine the Belmas decision. In fairness, it cannot be determined whether this idea originated with the former Attorney General or with his

office. The message parole officials received in this proposal was that if this path were to be followed, the Attorney General would no longer feel it necessary to pursue legal review of the decision as he had suggested he planned to do. Corrections officials maintain that this was just one option put forward from the Attorney General's Ministry during a period of time when there was a great deal of reaction to and discussion of the Parole Board's decision regarding Juliet Belmas. There was a suggestion that the Attorney General, because of his wide-ranging responsibility for the administration of justice in this province, may have been of the opinion that he had the power to question the Board's decision.

A further consideration had arisen which may have led some to believe that the Board's decision was open to challenge on the basis that an error had been made in respect to the actual date of parole eligibility. This technicality had been rectified by Corrections officials by means of granting Ms. Belmas a temporary absence to fill in the two week time gap leading up to her actual parole eligibility date. The Attorney General later stated that even though he had an opinion that would have permitted a legal challenge, he did not want to question a decision on a technicality.

At any rate, Parole Board officials immediately recognized that the re-hearing proposal was unworkable. A decision had been made within jurisdiction. It could only be challenged on the basis of procedural error. A tampering with the original decision would likely have resulted in a legal challenge from Ms. Belmas.

Because this was not a central issue and was quickly resolved on an internal basis it is not necessary to comment further on it except to point out that possibly it serves to underscore the need for a clear understanding among government officials of the Parole Board's autonomy. That understanding could be facilitated by a clear statement of Parole Board independence contained in a provincial statute.

F. THE NEW CHAIRMAN'S PARTICIPATION

During the course of this inquiry, a further issue which needed to be considered was a suggestion in the media (Vancouver Sun, August 10, 1988) that there was bias in the March 22, 1988 Parole Board hearing which denied Juliet Belmas day parole. The basis of this charge was that the newly appointed Chairman of the Parole Board, Lynn Stevenson, took part in this hearing even though she was the ex-director of Lakeside Correctional Centre where Juliet Belmas had previously been incarcerated. It was also perceived that Ms. Stevenson was Attorney General Brian Smith's personal choice for chairman, and given Mr. Smith's public criticism of the original decision to release Ms. Belmas, the lawyer for Juliet Belmas submitted that Ms. Stevenson's participation in the March 22 hearing at least had the "appearance of lack of impartiality". However, this investigation has not been able to sustantiate any actual bias in the parole hearing because of Lynn Stevenson's involvement, for the following reasons.

It has been determined that the nomination of Ms. Stevenson to the chairman's post did not originate with the Attorney General. The senior Corrections official who proposed her candidacy did so on the basis of her demonstrated ability and with the thought in mind that it would be advantageous to continue to have a qualified professional from the

Corrections field occupying that key post. The Attorney General had been considering other candidates but decided that she represented the best choice. During pre-selection interviews the Attorney General discussed philosophy of parole with her, but there was no mention of specific cases.

In her role of prison director, Ms. Stevenson's contact with Ms. Belmas would have been limited. Apart from two minor disciplinary incidents, the bulk of Ms. Belmas' involvement with staff at that centre was with line staff. Ms. Stevenson recalls facilitating media contacts on behalf of Ms. Belmas and her co-accused during the earlier period at Lakeside Correctional Centre, but does not recall any other direct involvement.

The suggestion has also been made that Ms. Stevenson's decision while director at Lakeside Correctional Centre to deny acceptance of Juliet Belmas as a federal-provincial transferee is suggestive of negative feeling toward Ms. Belmas. However, the decision whether to accept a prisoner facing a 20 year sentence into the provincial system and the decision whether someone in the provincial system merits a day parole are qualitatively different, and it is not considered appropriate to link them.

Before taking her place on the panel, Ms. Stevenson had canvassed the issue of such involvement with the professional staff of the Parole Board. These respected and experienced parole officials indicate that if they had any misgivings about Ms. Stevenson's role at the start, by the time of the March hearing, they were convinced that she would operate in an objective fashion and make decisions independently. After internal Parole Board discussion, it was decided that she could be involved without the possibility of bias. Having been the director of the principal place of incarceration for females in the province, it would be a major limitation for the Chairman to be disqualified from sitting on any hearings involving inmates of that institution during her tenure. This was not considered to be reasonable or necessary.

A final consideration in the chairman's mind was that if there were decisions made which brought public criticism, she wanted, as the senior and only permanent sitting member on the Board, to take the responsibility herself. Had Ms. Belmas objected to her presence at the hearing, Ms. Stevenson says she was prepared to withdraw. Unfortunately, this position was not communicated to Ms. Belmas, and Ms. Stevenson concedes that this is one thing that might have been done differently. Nevertheless, in the end a decision which was based on the evidence before the Board at that time

and made in accordance with the Board's criteria was rendered. This investigation does not substantiate the suggestion of unfairness in Ms. Stevenson's participation in the March 22, 1988 Parole Board panel.

G. REPLACEMENT OF PAST CHAIRMAN AND BOARD MEMBERS

The charge had been levelled in the media that former Parole Board Chairman John Konrad, and Board members Alex Hankin and Robert Thompson had lost their positions as a result of the Belmas May 5, 1987 parole decision (Vancouver Sun, August 3, 1988). Mr. Hankin and Mr. Thompson were generally regarded as very capable Board members by their colleagues at the Parole Board. Mr. Konrad was generally respected by the professional parole community across Canada.

The chairman had held that post for about eight years, ever since the Board had re-organized. While for the most part the Board's operation had gone smoothly, there were differences of philosophy and personnel practice evident from time to time between the chairman and the former Attorney General, the elected official to whom he reported. After a thorough review of the statements of those involved in the decision, it is the conclusion of this investigation that the rescinding of the chairman's appointment did not take place because of the Belmas parole decision. Rather, it was based on considerations which for the most part do not relate directly to this investigation.

The names of Mr. Hankin and Mr. Thompson had been included

with others fowarded to the former Attorney General by the Parole Board for a one year reappointment. The Attorney General was prepared to submit all names for cabinet's consideration. However, support was lacking for these two reappointments from backbenchers representing their two constituencies. The Attorney General then acquiesced to the MLAs' will, and cabinet did not approve the reappointments of Mr. Hankin and Mr. Thompson. While it is possible that the Parole Board's May 5th, 1987 decision may have served to amplify concerns that already existed, it would appear that there were other grounds for the MLAs' decision. This investigation is not able to substantiate the allegation that the so-called "firings" happened solely because of the Belmas parole decision. Recommendations made elsewhere in this report address the concerns of Board members' tenure and independence.

H. A PROVINCIAL PAROLE ACT AND RECOMMENDATIONS

This case has demonstrated the need for the Province of British Columbia to have its own Parole Act.

Currently the B.C. Board of Parole operates under the federal Parole Act and a section of the provincial Corrections Act. A provincial statute dealing strictly with the subject of parole is not a new idea. A few years ago the B.C. Board of Parole recommended to the Attorney General

> "...the enactment of a provincial statute to prescribe the legal framework for its operation. A draft bill has been submitted and provides for a legal basis for the existence and independence of the Board, and generally prescribes its operation within the context of the provisions of the Parole Act (Canada)."

More recently, former Attorney General Brian Smith concurred that it was "...undoubtedly time to move toward a provincial parole statute, separate from the Corrections Act, to clarify the status of the B.C. Board of Parole and to give expression to our views regarding the conditions and criteria which should pertain to parole." To that end a green paper was drafted and circulated for public discussion.

It has been suggested that a provincial Parole Act is under consideration by the present Solicitor General for

presentation at the next sitting of the Legislative Assembly. As a result of the issues raised in this investigation, it is recommended that the Act should contain the following provisions.

1. The community based model of parole appointments quoted in Section A herein (pp. 3 & 4) should be set out in the Act. There should not be the slightest suspicion that Parole Board decisions are affected by narrow political pressure. With the community-based model clearly set out in legislation there would be greater public confidence that the views of the wider community are reflected in the Board's decisions.

2. The Act should explicitly state that, in the exercise of its decision-making role in any particular case, the Parole Board is completely independent of external direction. Parole Board members should never be under pressure to feel they are required to make "popular" decisions. Where justice and liberty issues are involved, whether the decision is popular or not is an irrelevant consideration.

3. The Board must continue to operate on the basis of well-defined and objective criteria, and these should be set out in the legislation so that they are strictly followed and publicly understood.

4. The Board member appointment recommendations made in Section D herein (pp. 17-19) dealing with reappointment, subsequent hearings and other employment should be set out in the legislation. The current practice of a one year appointment followed by a three year reappointment raises the possibility of the appointee feeling vulnerable to external influences during the first year. Because the community appointment model should lead to the best possible candidates being appointed, such a probationary period should not be necessary.

5. The issue of the Chairman's tenure should also be addressed in such an Act. Because this person is a full-time appointee who has senior responsibility for the operation of the Board, it may be that a single 6 year term would provide valuable continuity and direction.

There may be other issues relevant to such a statute on which the Office of the Ombudsman will wish to comment at a later date outside of the concerns raised in this investigation.

Stephen Owen

Ombudsman